



washington state department of  
community, trade and economic development



## **Department of Ecology Department of Community, Trade and Economic Development**

### **Questions and Answers on ESHB 1933 Critical Areas Protection Under the Growth Management Act and Shoreline Management Act**

#### **1. What are the objectives of ESHB 1933?**

In 1995, the Legislature amended the Growth Management Act (GMA) and the Shoreline Management Act (SMA) to partially integrate the two statutes (1995 c 347). The amendments incorporated the goals and policies of the SMA as the 14<sup>th</sup> goal of the GMA, specifically designated the goals and policies of a shoreline master program (SMP) as an element of a local government's comprehensive plan, and designated the balance of the SMP as a segment of the jurisdiction's development regulations (RCW 36.70A.480). The Legislature transferred jurisdiction for appeals of SMPs from the Shoreline Hearings Board to the Growth Management Hearings Boards (GHMB) for cities and counties fully planning under GMA. (RCW 90.58.190).

In 2003, the Central Puget Sound Growth Management Hearings Board (CPSGMHB) issued a decision in *Everett Shorelines Coalition v. City of Everett*, CPSGMHB No. 02-3-0009c (Jan. 9, 2003). The petitioners appealed the City of Everett's amended SMP and the Department of Ecology's (Ecology) approval of the SMP. The decision was the first major review by a GMHB of an SMP under the 1995 amendments, and its length and breadth highlighted the overall complexity of the relationship between the SMA and GMA. The decision is currently on appeal.

The 2003 Legislature responded to the Board's decision by adopting ESHB 1933. ESHB 1933 took effect on July 27, 2003. Ecology and the Department of Community, Trade and Economic Development (CTED) have prepared this guidance to assist local governments to interpret and apply the requirements of ESHB 1933.

The Court of Appeals is reviewing the *City of Everett* decision and will likely determine how ESHB 1933 applies to that case. Neither CTED nor Ecology intends that this guidance influence that litigation which may have its own specific factual and legal considerations.

## 2. What are the provisions of ESHB 1933?

### A. Provisions of ESHB 1933

1. **GMA goals are not in priority order.** The goals of the GMA (RCW 36.70A.020), including the goals and policies of the SMA (RCW 90.58.020) that are included in RCW 36.70A.020 by RCW 36.70A.480, continue not to be listed in priority order. ESHB 1933 Sec. 1(2)(b); Sec. 5(1) [*Finding – Intent (2)(c) in RCW 90.58.030*;<sup>1</sup> 36.70A.480(1)].
2. **Shorelines of statewide significance may include critical areas, but are not critical areas.** The Legislature clarified that although Washington’s shorelines may contain critical areas, the shorelines are not critical areas simply because they are shorelines of statewide significance. ESHB 1933 Sec. 1(2)(c); Sec. 5(5) [*Finding – Intent (2)(c) in RCW 90.58.030*; 36.70A.480(5)].
3. **Jurisdiction for critical areas changes and protection requirements of GMA follow along.** Although critical areas in shorelines are to be identified and designated under the GMA, they are to be protected under the SMA. Each local government must amend its existing SMP or adopt a new SMP that provides a level of protection to critical areas within shorelines that is “at least equal” to the level of protection provided to critical areas by the local government’s critical areas ordinances (CAOs) adopted under the GMA. ESHB 1933 Sec. 3(4); Sec. 5(4) [*RCW 90.58.090(4)*; 36.70A.480(4)].
4. **Science standards for critical areas are primarily under the SMA.** The GMA’s best available science (BAS) requirement does not apply when a shoreline master program is being updated or amended pursuant to the shoreline guidelines. ESHB 1933 Sec. 1(3); Sec. 5(3)(c) [*Finding – Intent (3) in RCW 90.58.030*; 36.70A.480(3)(c)]. Rather, the information requirements of RCW 90.58.100 apply. However, the GMA’s BAS requirement will continue to apply to critical areas ordinances adopted under the GMA. As explained above, the critical areas segment of an SMP must provide a level of protection for critical areas within shorelines that is at least equal to that provided by the local government’s CAO adopted under the GMA. ESHB 1933 Sec. 3(4); Sec 5(4) [*RCW 90.58.090(4)*; 36.70A.480(4)].
5. **The SMP standard of review for the Growth Management Hearings Board is clarified.** A GMHB may review an SMP or SMP amendment only for compliance with the policies and requirements of the SMA and the shoreline guidelines, SEPA as it relates to the adoption of SMPs and SMP amendments, and the internal consistency provisions of RCW 36.70A.070, 36.70A.040(4),

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<sup>1</sup> ESHB Sec. 1 has been included in the Finding-Intent Notes for RCW 90.58.030.

35.63.125, and 35A.63.105. ESHB 1933 Sec. 4(2)(b); Sec. 5(3) [RCW 90.58.190(2)(b); 36.70A.480(3)]. The GMHBs are to read, interpret, apply, and implement the SMA “consistent with the decisions of the shorelines hearings board and Washington courts prior to the decision of the [CPSGMHB] in *Everett Shorelines Coalition v. City of Everett and Washington State Department of Ecology*.” Therefore, the GMHBs (and other interested parties) must apply the precedent for shoreline cases established by the Washington courts and the shoreline hearings board when determining an appeal of an SMP. ESHB 1933 Sec. 1(2)(a) [*Finding – Intent (2)(a) in RCW 90.58.030*].

**B. Provisions of ESHB 1933 that apply as SMPs are updated**

1. **Critical areas within shorelines must have equivalent protection.** For SMPs submitted to Ecology after July 27, 2003, Ecology will approve an SMP’s segment related to critical areas within the shoreline only when Ecology determines that the critical areas within the shorelines receive “a level of protection . . . at least equal to that provided by the local government’s critical areas ordinances adopted and thereafter amended pursuant to RCW 36.70A.060(2).” ESHB 1933 Sec. 3(4) [RCW 90.58.090(4)].
2. **GMHB review of an SMP is clarified.** GMHBs may review an SMP for compliance with the SMA, its policy (RCW 90.58.020), Ecology’s guidelines, and the GMA’s internal consistency provisions in RCW 36.70A.070, 36.70A.040(4), 35.63.125, and 35A.63.150. ESHB 1933 Sec. 4(2)(b) [RCW 90.58.190(2)(b)]. This consistency review is the only review of GMA provisions applicable to SMPs.

**3. Is my SMP still valid?**

Yes. ESHB 1933 did not invalidate existing SMPs. Rather, it delineated the jurisdiction between the SMA and GMA and details the procedural steps and substantive standards required the next time a jurisdiction updates its SMP.

**4. Regarding an SMP, what does ESHB 1933 require?**

ESHB 1933 requires that, when a jurisdiction updates its SMP, the segment of the SMP addressing critical areas must be consistent “with RCW 90.58.020 and applicable shoreline guidelines,” and the segment must provide “a level of protection of critical areas at least equal to that provided by the local government’s critical areas ordinance adopted and thereafter amended pursuant to RCW 36.70A.060(2).” ESHB 1933 Sec. 3(4); Sec. 5(4) [RCW 90.58.090(4); 36.70A.480(4)]. When amending an SMP, a jurisdiction will follow the SMA’s scientific approach described in RCW 90.58.100(1)(a-f). ESHB 1933 Sec. 5(3)(b) and (c) [RCW 36.70A.480(3)(b) and (c)]. A jurisdiction also must ensure that its SMP meets “the internal consistency provisions of RCW 36.70A.070, 36.70A.040(4), 35.63.125, and 35A.63.105, and chapter 43.21C RCW as it relates to the adoption of master programs and amendments under chapter 90.58 RCW.” ESHB 1933 Sec. 4(2)(b) [RCW 90.58.190(2)(b)].

**5. Is my CAO still valid?**

Yes. ESHB 1933 did not invalidate existing CAOs. ESHB 1933 also did not immediately transfer the protection of critical areas in shorelines from the existing CAOs to existing SMPs.

**6. When does the protection of critical areas in shorelines transfer from CAO's adopted under GMA to the SMP?**

ESHB 1933 Sec. 5 includes provisions that are not limited to a specific effective date and provisions that apply at the time that local governments update their shoreline master plans pursuant to shoreline guidelines. *[RCW 36.70A.480]*

The Legislature did not limit the effective date of Sec. 5(3)'s *[RCW 36.70A.480(3)]* general statement that "the policies, goals, and provisions of chapter 90.58 RCW and applicable guidelines shall be the sole basis for determining compliance of a shoreline master program." There is also no limit to the effective date of Sec. 5(3)(c) *[RCW 36.70A.480(5)(c)]* which provides that RCW 36.70A.172 (the BAS requirement) does not apply to the adoption or amendment of a local government's shoreline master program.

ESHB 1933 Sec. 5(3)(a) *[RCW 36.70A.480(3)(a)]* shifts the protection of critical areas within shorelines exclusively to the SMP when Ecology approves an SMP adopted pursuant to Ecology's Shoreline Guidelines after the effective date of ESHB 1933. The Shoreline Guidelines were adopted in December 2003. Section 5(3)(b) *[RCW 36.70A.480(3)(b)]* specifically provides that GMA designated critical areas in shorelines that are the subject of an SMP adopted pursuant to the new Ecology guidelines are not subject to the GMA. During the period of time between the effective date of ESHB 1933 and a local government's update of its SMP, the local government's GMA critical areas regulations continue to apply to designated critical areas throughout the jurisdiction. If the local government updates its critical areas ordinance under the GMA before it updates its Shoreline Master Program then the GMA's BAS requirements will apply to the critical area update in the shoreline jurisdiction until the SMP is updated.

**7. Is there a deadline for adopting or amending SMPs to protect critical areas in shorelines?**

ESHB 1933 does not set a deadline. However, SSB 6012, also adopted by the 2003 Legislature, imposes deadlines for amending SMPs to make them consistent with Ecology's shoreline guidelines, as adopted on December 17, 2003, or as thereafter amended. *[RCW 90.58.080]*

The deadlines under SSB 6012 are coordinated with the deadlines under RCW 36.70A.130, which the Legislature amended in 2002. Both CAOs and SMPs must be updated every seven years. The coordinated update schedule for CAOs and SMPs over the next 20 years is summarized in the following table.

<b>Deadline</b>	<b>CAOs</b>	<b>SMPs</b>
12/01/04	Clallam, Clark, Jefferson, King, Kitsap, Pierce, Snohomish, Thurston, and Whatcom counties, and cities within those counties	
12/01/05	Cowlitz, Island, Lewis, Mason, San Juan, Skagit, and Skamania counties, and cities within those counties	Snohomish and Whatcom counties; cities of Bellingham and Port Townsend
12/01/06	Benton, Chelan, Douglas, Grant, Kittitas, Spokane, and Yakima counties, and cities within those counties	
12/01/07	Adams, Asotin, Columbia, Ferry, Franklin, Garfield, Grays Harbor, Klickitat, Lincoln, Okanogan, Pacific, Pend Oreille, Stevens, Wahkiakum, Walla Walla, and Whitman counties, and cities within those counties	
12/01/08		
12/01/09		King County and its cities larger than 10,000
12/01/10		
12/01/11	Clallam, Clark, Jefferson, King, Kitsap, Pierce, Snohomish, Thurston, and Whatcom counties, and cities within those counties	Clallam, Clark, Jefferson, Kitsap, Pierce, and Thurston counties, and cities within those counties (except Port Townsend) The cities within Snohomish and Whatcom counties, (except Everett and Bellingham) and the cities in King County less than 10,000
12/01/12	Cowlitz, Island, Lewis, Mason, San Juan, Skagit, and Skamania counties, and cities within those counties	
12/01/13	Benton, Chelan, Douglas, Grant, Kittitas, Spokane, and Yakima counties, and cities within those counties	
12/01/14	Adams, Asotin, Columbia, Ferry, Franklin, Garfield, Grays Harbor, Klickitat, Lincoln, Okanogan, Pacific, Pend Oreille, Stevens, Wahkiakum, Walla Walla, and Whitman counties, and cities within those counties	
12/01/15		
12/01/16		
12/01/17		
12/01/18	Clallam, Clark, Jefferson, King, Kitsap, Pierce, Snohomish, Thurston, and Whatcom counties, and cities within those counties	
12/01/19	Cowlitz, Island, Lewis, Mason, San Juan, Skagit, and Skamania counties, and cities within those counties	
12/01/20	Benton, Chelan, Douglas, Grant, Kittitas, Spokane, and Yakima counties, and cities within those counties	
12/01/21	Adams, Asotin, Columbia, Ferry, Franklin, Garfield, Grays Harbor, Klickitat, Lincoln, Okanogan, Pacific, Pend Oreille, Stevens, Wahkiakum, Walla Walla, and Whitman counties, and cities within those counties	
12/01/22		
12/01/23		

**8. How can I meet the requirement of ESHB 1933 that my SMP provide a level of protection equivalent to a CAO for critical areas that lie within shorelines?**

Two options have been identified at this time, although others may evolve. You may:

- A. Determine the level of protection that the CAO would have provided to the functions and values of critical areas within the shorelines, and provide an analysis of how the SMP provides equivalent protection; or
- B. Apply the CAO within the critical area portion of the shorelines by incorporating the CAO into the SMP.

**9. What if a critical area lies partly within shoreline jurisdiction and partly outside the shoreline jurisdiction?**

A local government must protect critical areas within shoreline jurisdiction with its SMP. Where a particular critical area or its buffers lie only partly within the normal jurisdictional limit, the local government may extend the shoreline jurisdiction to include the entire critical area and all lands necessary to protect the critical area. ESHB 1933 Sec. 2(2)(f)(ii) [RCW 90.58.030(2)(f)(ii)]. If the local government thus extends jurisdiction, the critical area and its buffers are to be protected by the SMP.

If the local government chooses not to extend its shoreline jurisdiction under ESHB 1933 Sec. 2(2)(f)(ii) [RCW 90.58.030(2)(f)(ii)], the entire critical area and its buffers must be protected under the local government's CAOs adopted under the GMA. ESHB 1933 Sec. 5(6) [RCW 36.70A.480(6)]. However, the SMP will still apply to the portion of a critical area or its buffers that lie within the shoreline jurisdiction.

**10. Does ESHB 1933 effectively preclude regulation of critical areas under the GMA as they relate to agricultural activities?**

No. ESHB 1933 specifically provides in Sec. 5 (3)(b) [RCW 36.70A.480(3)(b)] that it is not intended to affect whether or to what extent agricultural activities, as defined in RCW 90.58.065, are subject to the GMA.

**11. Does ESHB 1933 affect the applicability of the SMA to forest practices that are regulated under the Forest Practices Act (Chapter 76.09 RCW)?**

No. ESHB 1933 Sec. 2(2)(f)(ii) [RCW 90.58.030(2)(f)(ii)] provides that forest practices, except conversions to nonforest land use, are not subject to additional regulations under this legislation.